

2013 DRAFTING REQUEST

Bill

Received:	9/23/2013	Received By:	mgallagh
Wanted:	As time permits	Same as LRB:	
For:	Dean Knudson (608) 266-1526	By/Representing:	Matt R.
May Contact:		Drafter:	mgallagh
Subject:	Occupational Reg. - misc Occupational Reg. - prof lic	Addl. Drafters:	
		Extra Copies:	MED

Submit via email: **YES**
 Requester's email: **Rep.Knudson@legis.wisconsin.gov**
 Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Out-of-state real estate brokers

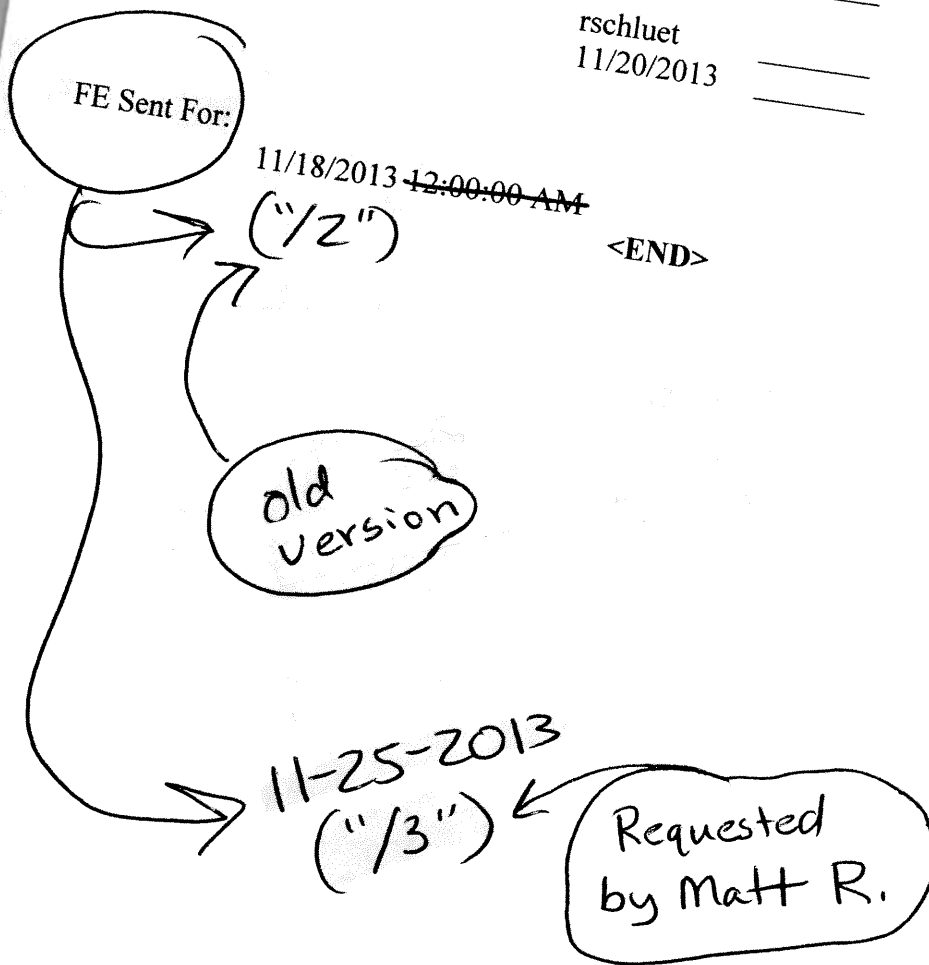
Instructions:

See attached

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/?	mgallagh 10/4/2013	jdye 10/7/2013	rschluet 10/7/2013	_____			
/P1	mgallagh 10/21/2013	jdye 10/22/2013	rschluet 10/22/2013	_____	srose 10/7/2013		
/P2	mgallagh 10/31/2013	jdye 11/4/2013		_____	sbasford 10/22/2013		

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/P3	mgallagh 11/12/2013	jdyer 11/12/2013	jfrantze 11/4/2013	_____	lparisi 11/4/2013		
/1	mgallagh 11/18/2013	jdyer 11/18/2013	rschluet 11/12/2013	_____	srose 11/12/2013		State Crime
/2	mgallagh 11/19/2013	jdyer 11/20/2013	jfrantze 11/18/2013	_____	mbarman 11/18/2013		State Crime
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per matt
in Knudson's
office -

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FE Sent For:

<END>

Gallagher, Michael

Subject: RE: Drafting instructions RE: Out of state real estate licensees

From: Rossetto, Matt

Sent: Wednesday, September 18, 2013 4:22 PM

To: Kahler, Pam

Subject: Drafting instructions RE: Out of state real estate licensees

Hi Pam-

My boss would like legislation drafted regarding the ability of out of state licensed brokers to practice limited services in Wisconsin, given a signed agreement with a Wisconsin-based broker. A sketch that we and the Realtors have worked out is attached—please let me know if you have any questions. Not a huge rush on this given that the Assembly is not in session this month but we would like a draft to review within the next couple of weeks, if possible.

Thank you,

Matt

Matt Rossetto

Office of Representative Dean Knudson

30th Assembly District

(608) 266-1526



Cooperation between Wisconsin real estate brokers and out-of-state brokers in Wisconsin real estate transactions

The following provides a structure that will allow out-of-state brokers the ability to provide limited brokerage services in the State of Wisconsin under the requirement of entering into a cooperative agreement created by the Wisconsin Real Estate Examining Board. This cooperation should be flexible enough to address all Wisconsin sales and rental transactions, regardless of the property type. The intent of this change would not modify the allowed referral fees to be paid under Wis. Stat. § 452.19. This modification would require the creation of a new statute section in Wisconsin Statute Chapter 452. There are a variety of possible locations for the new section, such as 452.12(7), 452.136 or 452.137.

The statute section would be created to address the following parameters:

Acts permitted by unlicensed out-of-state broker; cooperation with Wisconsin broker

- (1) An out-of-state broker, for a fee, commission, or other valuable consideration, or in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, may perform acts with respect to real estate that require a license under this chapter without a license under this chapter, if the out-of-state broker does all of the following:
 - (a) Works in cooperation with a broker who holds a valid license issued under this chapter;
 - (b) Enters into a written agreement issued by the board with the broker described in sub.(a) that includes the terms of cooperation and compensation, a statement that the out-of-state broker and the broker's agents will comply with the laws of this state and a statement of irrevocable written consent that legal actions arising out of the conduct of the out-of-state broker or the broker's agents may be commenced against the out-of-state broker in a court with jurisdiction in a county in Wisconsin in which the cause of action accrues.
 - (c) Furnishes the broker described in sub.(a) with a copy of the out-of-state broker's current certificate of good standing or other proof of a license in good standing from a jurisdiction where the out-of-state broker maintains a valid real estate license;
 - (d) Deposits all escrow funds, security deposits, and other money received by either the out-of-state broker or the broker described in sub.(a) in a trust account maintained by the broker described in sub.(a);
 - (e) Deposits all documentation required by this section and records and documents related to the transaction with the broker described in sub.(a), unless otherwise agreed to by the parties in writing.
- (2) The broker described in subsection (1)(a) shall retain the documentation that is provided by the out-of-state broker as required under this section, and the records and documents related to a transaction, for at least three (3) years.
- (3) An out-of-state salesperson may perform acts with respect to real estate that require a salesperson to be licensed under this chapter without a license under this a chapter if the out-of-state salesperson meets all of the following requirements:
 - (a) The out-of-state salesperson:
 1. is licensed with and works under the direct supervision of the out-of-state broker;
 2. provides the broker described in subsection (1)(a) with a copy of the out-of-state

salesperson's current certificate of good standing or other proof of a license in good standing from the jurisdiction where the out-of-state salesperson maintains a valid real estate license in connection with the out-of-state broker; and

3. must work only in the name of and provide to the broker described in subsection (1)(a) the consent of the out-of-state broker under whom the out-of-state salesperson is licensed.

(b) The out-of-state broker described in sub. (a)1. meets all of the requirements of subsection (1)(a).

(4) A person licensed in a jurisdiction where there is not a legal distinction between a real estate broker license and a real estate salesperson license must meet the requirements of subsection (1) before engaging in an act that requires a license under this chapter.

(5) Nothing in this section shall permit an out-of-state broker to list a Wisconsin property for sale without a Wisconsin real estate broker license or the involvement of a Wisconsin broker.

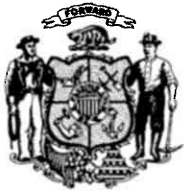
(6) Nothing in this section shall permit an out-of-state broker to accompany a prospective buyer or tenant to the real estate or site unless agreed to in the cooperative agreement.

(7) No person, as defined in Wis. Stat. 180, may pay any part of a fee or commission to the out-of-state broker for any service rendered relating to buying, selling, exchanging, leasing, or renting unless the out-of-state broker has entered into a cooperative agreement issued by the board with the Wisconsin broker. All fees and commissions shall be paid to the out-of-state broker only by the broker described in subsection (1)(a).

(8) A broker or salesperson that resides in Wisconsin or holds a Wisconsin real estate license is NOT ELIGIBLE to enter into a cooperative agreement on behalf of another broker's listings or rental property.

(9) Any violation of this section of this Chapter shall be unlawful and shall be grounds for investigation, complaint, proceedings and discipline, and shall be punished by a fine of not more than \$5,000 for each offense.

(10) The board shall have authority to promulgate rules and regulations establishing the conditions of the terms of the cooperative agreement.



In 10/4 By Tues. 10/8 Thanks!
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3129/?

MPG:.....

jl

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

3217/P1

✓

Gen

- 1 AN ACT ...; **relating to:** cooperation of Wisconsin licensed real estate brokers with
2 out-of-state real estate brokers and salespersons, requiring the exercise of
3 rule-making authority, and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 4 SECTION 1. 452.01 (5) ⁿ of the statutes is created to read:
5 452.01 (5) ⁿ ^{← B} "out-of-state broker" means a nonresident who is not licensed
6 under this chapter and who is regularly and lawfully engaged in the real estate
7 brokerage business in another state, a territory or possession of the United States,
8 or a foreign country. ✓

****NOTE: The drafting instructions do not define "out-of-state." Is the above definition consistent with your intent? The definition is based in part on the fee language of the splitting provision under s. 452.19.

1 **SECTION 2.** 452.01 (5p) of the statutes is created to read:

2 452.01 (**5p**) "out-of-state salesperson" means a nonresident who is not
3 licensed under this chapter and who is employed by an out-of-state broker, other
4 than a broker or a person who is employed to sell or offer or attempt to negotiate an
5 initial sale or purchase of a time share.

 ****NOTE: Consistent with the definition of "salesperson" under s. 452.01 (7), the
above definition excludes a person who is employed as a time-share salesperson. Is that
exclusion consistent with your intent?

6 **SECTION 3.** 452.01 (7r) of the statutes is amended to read:

7 452.01 (**7r**) "Subagent" means a broker who is engaged by another broker to
8 provide brokerage services in a transaction, but who is not the other broker's
9 employee. Subagent does not include an out-of-state broker.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102; 2005
a. 87; 2009 a. 2; 2011 a. 32.

 ****NOTE: Is it consistent with your intent to exclude an out-of-state broker from
the definition of "subagent" and, therefore, the duties imposed on a subagent under s.
452.133 (4)? In that connection, when an out-of-state broker and a licensed broker
cooperate in a real estate transaction under the bill, would the licensed broker be the
principal, the subagent, or neither? You may want to consider clarifying that in the draft.
Or, do you want to leave that to rulemaking?

 ****NOTE: Also, would the out-of-state broker have any duties under s. 452.133 or
disclosure obligations under s. 452.135? You may want to make that clear.

10 **SECTION 4.** 452.137 of the statutes is created to read:

11 **452.137 Cooperation with out-of-state brokers and salespersons. (1)**

12 DEFINITIONS. In this section:

13 (a) "Cooperative agreement" means the agreement established by the board
14 under sub. (4).

15 (b) "Licensed broker" means a broker who is licensed under this chapter.

16 (c) "Licensed salesperson" means a salesperson who is licensed under this
17 chapter.

1 (2) OUT-OF-STATE BROKERS. An out-of-state broker may act as a broker in this
2 state only if the out-of-state broker does all of the following:

3 (a) Enters into a cooperative agreement with a licensed broker and cooperates
4 with the licensed broker on all real estate transactions subject to the cooperative
5 agreement.

6 (b) Submits to the licensed broker evidence that the out-of-state broker is
7 licensed in good standing to engage in real estate brokerage in a jurisdiction other
8 than this state.

9 (c) Deposits with the licensed broker copies of all documents the out-of-state
10 broker receives or generates in connection with any real estate transaction subject
11 to the cooperative agreement, unless the out-of-state broker and licensed broker
12 agree in writing that the out-of-state broker is not required to do so. A licensed
13 broker shall maintain all documents it receives under this paragraph, and all other
14 documents it receives or generates in connection with a real estate transaction
15 subject to the cooperative agreement, for at least 3[✓] years after the date of closing on
16 the transaction.

17 (3) OUT-OF-STATE SALESPERSON. An out-of-state salesperson may act as a
18 salesperson in this state only if all of the following conditions are met:

19 (a) The out-of-state broker who employs the out-of-state salesperson satisfies
20 all of the requirements under sub. (1). (2)

2 ****NOTE: Because the draft includes the requirement that the out-of-state broker
with whom the out-of-state salesperson is employed must satisfy the requirements
under sub. (1), including entering into a cooperative agreement, it does not seem
necessary that the out-of-state salesperson provide the out-of-state broker's consent to
work on real estate transactions subject to the cooperative agreement. Do you still want
to include that consent requirement?

21 (b) The out-of-state salesperson works under the direct supervision of the
22 out-of-state broker.

1 (c) The out-of-state salesperson submits evidence to the licensed broker that
2 the out-of-state salesperson is licensed in good standing to act as a salesperson in
3 a jurisdiction other than this state.✓

****NOTE: Does it make sense to include the above license requirement for the out-of-state salesperson given the definition of an out-of-state salesperson as an employee, other than a broker, of the out-of-state broker and the fact that the out-of-state broker with whom the out-of-state salesperson is employed must comply with sub. (1), which includes entering into a cooperative agreement? Perhaps we could only require proof of a license if the out-of-state salesperson is from a jurisdiction that requires such a license. Please let me know how you would like to proceed.

****NOTE: Also, I did not include the requirement that a person from a jurisdiction that does not separately license a salesperson and broker must satisfy the requirements of sub. (1) because the requirements of sub. (1) have to be satisfied regardless of whether the person is an out-of-state salesperson or out-of-state broker.✓ As currently drafted, the requirements of sub. (1) will always have to be met by an out-of-state broker that wants to do brokerage business in Wisconsin. Please let me know if that is not consistent with your intent.

4 (d) In any real estate transaction subject to the cooperative agreement, the
5 out-of-state salesperson represents only the out-of-state broker with whom the
6 out-of-state salesperson is employed.✓

7 (4) COOPERATIVE AGREEMENT. (a) The board shall, by rule, establish the form
8 and terms of the cooperative agreement.✓

****NOTE: The cooperative agreement is most likely subject to the requirements of s. 452.06 concerning submission of real estate forms to the appropriate council. Is that consistent with your intent?

9 (b) The cooperative agreement shall do at least all of the following:

10 1. Establish the terms of cooperation between the out-of state broker, any
11 out-of-state salesperson, and the licensed broker.✓

12 2. Provide that the out-of-state broker may not engage in any of the activities
13 under s. 452.01 (2) (bm) or (h) without the direct involvement of the licensed broker.✓

****NOTE: I cross-referenced the activities described under s. 452.01 (2) (bm) and (h) rather than saying that the out-of-state broker may not "list" a property or "accompany a prospective buyer or tenant to the real estate," i.e. "show" a property, because the activities under s. 452.01 (2) (bm) and (h) presumably cover the listing and showing of properties integral to the brokerage of real estate. Is that change okay?

****NOTE: Also, what is your intent concerning the use of the term "involvement" here instead of "cooperation"? As noted below, the draft already prohibits an out-of-state

broker from acting as a licensed broker in this state without cooperating with and entering into a cooperative agreement with a licensed broker. Is it your intent that the licensed broker play a specific role with respect to listing and showing properties subject to the cooperative agreement?

1 3. Establish the terms of the out-of-state broker's compensation. Those terms
2 shall provide that the out-of-state broker may not accept any fee or commission in
3 connection with a real estate transaction subject to the cooperative agreement unless
4 the out-of-state broker receives the fee or commission directly from the licensed
5 broker and in accordance with any other terms of the cooperative agreement.

② ****NOTE: I included the above requirements under subds. 2. and 3. as
 requirements of the cooperative agreement because they seem to fit better here. In the
 case of subd. 2., sub. (a) already prohibits an out-of-state broker from performing the acts
 of a licensed broker in this state unless the out-of-state broker cooperates with a licensed
 broker and enters into a cooperative agreement with the licensed broker. Also, subd. 3.,
 if made a general statutory requirement as opposed to a requirement for the cooperative
 agreement might have the unintended consequence of prohibiting a referral fee under s.
 452.19.

6 4. Provide that all client funds, as defined in s. 452.13 (1) (a), that the
7 out-of-state broker and licensed broker receive in connection with a real estate
8 transaction subject to the cooperative agreement shall be deposited in a trust account
9 maintained by the licensed broker.

 ****NOTE: Should the trust account satisfy the requirements under s. 452.13?

10 5. Provide that the licensed broker and licensed salesperson may not act under
11 the cooperative agreement on behalf of another licensed broker who is not a party to
12 the cooperative agreement.

 ****NOTE: Does the above subd. 5. achieve your intent? The drafting instructions
 state that a licensed broker or licensed salesperson should not be eligible to enter into a
 cooperative agreement "on behalf of another broker's listings or rental property."

 ****NOTE: Also, is it possible to have more than one licensed broker, or more than
 one out-of-state broker for that matter, be a party to a cooperative agreement with an
 out-of-state broker? Is that consistent with your intent?

13 6. Require that the out-of-state broker and its agents comply with the laws
14 of this state and require the out-of-state broker to file with the board an irrevocable
15 consent that actions may be commenced against the out-of-state broker in the

1 proper court of any county of the state in which a cause of action arises or in which
2 the plaintiff resides, by the service of any process or pleading authorized by the laws
3 of this state on the board or any duly authorized employee. The consent shall
4 stipulate and agree that such service is valid and binding as due service upon the
5 out-of-state broker in all courts in this state. The consent shall be duly
6 acknowledged and, if made by a corporation, shall be authenticated by the corporate
7 seal.

****NOTE: The above language is taken for the most part from the consent required
under s. 452.11 (3). Is the language consistent with your intent?

8 **(5) PENALTY.** (a) Subject to the rules promulgated under s. 440.03 (1), the board
9 may conduct investigations and hearings to determine whether a person has violated
10 this section or a rule promulgated under this section.

11 (b) Notwithstanding s. 452.17 (3), any person who violates this section or a rule
12 promulgated under this section may be fined not more than \$5,000 for each violation.

13 **SECTION 5. Effective date.**

14 (1) This act takes effect on first day of the 7th month beginning after
15 publication.

****NOTE: I included a six-month delayed effective date to give the board time to
develop and implement the cooperative agreement. Please let me know if that is not
consistent with your intent.

16 **(END)**

Gallagher, Michael

From: Rossetto, Matt
Sent: Wednesday, October 09, 2013 4:53 PM
To: Gallagher, Michael
Subject: FW: Out of state brokers draft
Attachments: Comments in response to the Preliminary draft relating to Out.docx

Hi Mike—

Attached is a response to your drafters notes from LRB 3217. Please let me know if you have questions regarding the changes requested.

Thank you,

Matt

Matt Rossetto
Office of Representative Dean Knudson
30th Assembly District
(608) 266-1526

From: Cori M. Lamont [<mailto:CoriL@wra.org>]
Sent: Wednesday, October 09, 2013 4:24 PM
To: Rossetto, Matt; Larson, Tom
Subject: RE: Out of state brokers draft

Matt,

Attached please find our comments and responses to the preliminary draft of the out-of-state brokers legislation.

Please let me know if you have any questions.

Cori

Cori M. Lamont
Director of Regulatory Affairs
Wisconsin REALTORS® Association
4801 Forest Run Road
Madison, WI 53704
tel: 608-241-2047 | fax: 608-241-5168 | www.wra.org
This is an advertisement from the WRA

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From: Rossetto, Matt [<mailto:Matt.Rossetto@legis.wisconsin.gov>]
Sent: Monday, October 07, 2013 3:57 PM
To: Larson, Tom; Cori M. Lamont
Subject: Out of state brokers draft

Hi Tom and Cori-

I just received a preliminary draft of the out-of-state brokers legislation... It is attached for your review and the drafters notes are contained within the draft. Please take a look and let me know what you think.

Matt

Matt Rossetto
Office of Representative Dean Knudson
30th Assembly District
(608) 266-1526

Comments in response to the Preliminary draft relating to Out-of-State Licensees

- ✓ **Section 1. Response to Note:** It would appear that the draft includes a definition that mirrors our intent.
- ✓ **Section 2. Response to Note:** The legislation should apply to all licensees under 452, including time-share salesperson.
- ✓ **Section 3. Response to Note:** The intent is to include subagent within the definition of out-of-state broker. Thus, there is not a need to include any reference to out-of-state broker in the definition or make any change to the definition.
- ✓ The cooperative agreement should allow the flexibility of the Wisconsin broker to determine what relationship the out-of-state broker needs to have with the buyer.
- ✓ It is the intent to require the out-of-state broker to follow all Wisconsin laws, including 452.133 and 452.135. That can be reiterated within the statute freestanding within this section and/or in the cooperative agreement.

As background: In a Wisconsin real estate transaction, to participate in a real estate transaction there must be an agency agreement in place with one or both of the brokers involved. To better illustrate, when a property is listed the listing broker has a client relationship with the seller when entering into the listing contract. However, a cooperating broker has the opportunity to have one of two relationships with the buyer; a client or a customer relationship. A client relationship is created when the buyer and the cooperating broker enter into a buyer agency agreement; if the buyer does not enter into the client relationship then the buyer is a customer of the cooperating broker. Under Wisconsin law the cooperating broker becomes a subagent of the principal broker (listing broker).

Section 4.

- ✓ **(3)(a) Response to Note:** If the consent is included in the cooperative agreement section, then that should be sufficient.
- ✓ **(3)(c) Response to Note one:** The intent is create the ability of the Wisconsin broker determine whether the out-of-state broker's salesperson can participate in the transaction and if so, proof that the salesperson is in good standing rather than taking the out-of-state broker's word.
- ✓ **Response to Note two:** that is consistent with the intent.
- ✓ **(4) Response to Note one:** You are correct. The form will be a WB form and the advisory committee works on those forms, makes a recommendation as to what the form should look like and then the REEB can make changes, send it back to the committee with comment, or adopt it. All Wisconsin real estate licensees must use WB forms if one is available.
- ✓ **Recommendation: remove (b) 2.** It is our intent to make it very clear in the legislation outside of the cooperative agreement. Therefore we would like the original proposed language or a version of it included, please see below.
 - ✓ Nothing in this section shall permit an out-of-state broker to list a Wisconsin property for sale without a Wisconsin real estate broker license or the involvement of a Wisconsin broker.
 - ✓ Nothing in this section shall permit an out-of-state broker to accompany a prospective buyer or tenant to the real estate or site unless agreed to in the cooperative agreement.

✓ *Response to Note two:* This should be moot due to our above recommendation and response. *NV*

✓ (4)(b)3. *Recommendation:* This section should be modified. The terms of the cooperative agreement and the original language provided regarding commission are two separate issues. The cooperative agreement should state that it establishes the terms of the compensation and nothing more. The separate statement of payment of the commission is to identify the fact while the listing broker "pays" the commission to the cooperating broker, often the title company disburses the money and the title company is not a party to the cooperative agreement. In order to ensure that people are not trying to circumvent the intent of the law change arguably the separate statement outside of the cooperative agreement meets the intended objective. Please see the original language provided.

✓ No person, as defined in Wis. Stat. 180, may pay any part of a fee or commission to the out-of-state broker for any service rendered relating to buying, selling, exchanging, leasing, or renting unless the out-of-state broker has entered into a cooperative agreement issued by the board with the Wisconsin broker. All fees and commissions shall be paid to the out-of-state broker only by the broker described in subsection (2)(a).

✓ (4)(b)4. *Response to Note:* Arguably the language should not require a 452.13 reference because if the Wisconsin listing broker is holding the money then they are already required to comply.

✓ (4)(b)5. *Response to Note one:* While it is okay to have this statement in the cooperative agreement, it would be our intent to have the language separated so that it is not just within the context of the cooperative agreement but within the statutory language.

✓ *Response to Note two:* Real estate companies can be very small (one broker) or very large with a number of brokers. In large companies sometimes the "main" broker delegates responsibilities to another more hands-on broker, often called a manager by the industry, and that manager most likely will have the authority to enter into the cooperative agreement with the out-of-state broker. So it is our intent to allow in those types of situations more than one broker to be a party to the agreement in those limited situations.

✓ (4)(b)6. *Comment:* we want to make sure that the out-of-state broker not only agrees to follow Wisconsin laws but also limit jurisdiction to Wisconsin only. I am not sure if that needs to be accomplished by adding only or must within the sentence on line 15 along with modifying the remainder portion of the language, for example on page 6 on lines 1-2 striking "or in which the plaintiff resides..". Also, to ensure this again is not limited just within context of the cooperation agreement does this language need to be provided as well in the main part of the statute?

✓ (4)(b)6. *Response to Note:* See above comment.

✓ **Section 5.** It is our intent to have a specific effective date in the legislation. At this time our recommendation is August 1, 2014.

see p1
Additional comment: It would appear that the statute should still provide the board the ability to create rules and regulations to establish the terms of the cooperative agreement. Please see above.

(10) The board shall have authority to promulgate rules and regulations establishing the conditions of the terms of the cooperative agreement.



LA. 10/21 By Friday 10/25 Thanks
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3217(P1)
MPG:jld:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Insert

D-Note

Regen

1/22

✓

1 AN ACT *to amend* 452.01 (7r); and *to create* 452.01 (5n), 452.01 (5p) and 452.137
2 of the statutes; **relating to:** cooperation of Wisconsin licensed real estate
3 brokers with out-of-state real estate brokers and salespersons, requiring the
4 exercise of rule-making authority, and providing a penalty.

and time-share
salespersons

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 452.01 (5n) of the statutes is created to read:
6 452.01 (5n) "Out-of-state broker" means a nonresident who is not licensed
7 under this chapter and who is regularly and lawfully engaged in the real estate
8 brokerage business in another state, a territory or possession of the United States,
9 or a foreign country.

***NOTE: The drafting instructions do not define "out-of-state." Is the above definition consistent with your intent? The definition is based in part on the fee language of the splitting provision under s. 452.19.

1 SECTION 2. 452.01 (5p) of the statutes is created to read:

2 452.01 (5p) "Out-of-state salesperson" means a nonresident who is not
3 licensed under this chapter and who is employed by an out-of-state broker, other
4 than a broker or a person who is employed to sell or offer or attempt to negotiate an
5 initial sale or purchase of a time share. plan Insert 2-5 ✓

***NOTE: Consistent with the definition of "salesperson" under s. 452.01 (7), the above definition excludes a person who is employed as a time-share salesperson. Is that exclusion consistent with your intent?

6 SECTION 3. 452.01 (7r) of the statutes is amended to read:

7 452.01 (7r) "Subagent" means a broker who is engaged by another broker to
8 provide brokerage services in a transaction, but who is not the other broker's
9 employee. Subagent does not include an out-of-state broker.

***NOTE: Is it consistent with your intent to exclude an out-of-state broker from the definition of "subagent" and, therefore, the duties imposed on a subagent under s. 452.133 (4)? In that connection, when an out-of-state broker and a licensed broker cooperate in a real estate transaction under the bill, would the licensed broker be the principal, the subagent, or neither? You may want to consider clarifying that in the draft. Or, do you want to leave that to rule making?

***NOTE: Also, would the out-of-state broker have any duties under s. 452.133 or disclosure obligations under s. 452.135? You may want to make that clear.

10 SECTION 4. 452.137 of the statutes is created to read:

11 452.137 Cooperation with out-of-state brokers and salespersons. (1)

12 DEFINITIONS. In this section:

13 (a) "Cooperative agreement" means the agreement established by the board
14 under sub. (4).

15 (b) "Licensed broker" means a broker who is licensed under this chapter.

16 (c) "Licensed salesperson" means a salesperson who is licensed under this
17 chapter.

Insert 2-5
L(1-2 + 3) 2-5

(1) (2) OUT-OF-STATE BROKERS. (a) An out-of-state broker may act as a broker in this state only if the out-of-state broker does all of the following:

1. (a) Enters into a cooperative agreement with a licensed broker and cooperates with the licensed broker on all real estate transactions subject to the cooperative agreement.

2. (b) Submits to the licensed broker evidence that the out-of-state broker is licensed in good standing to engage in real estate brokerage in a jurisdiction other than this state.

(c) Deposits with the licensed broker copies of all documents the out-of-state broker receives or generates in connection with any real estate transaction subject to the cooperative agreement, unless the out-of-state broker and licensed broker agree in writing that the out-of-state broker is not required to do so. A licensed broker shall maintain all documents it receives under this paragraph, and all other documents it receives or generates in connection with a real estate transaction subject to the cooperative agreement, for at least 3 years after the date of closing on the transaction.

(3) OUT-OF-STATE SALESPERSONS. An out-of-state salesperson may act as a salesperson in this state only if all of the following conditions are met:

(a) The out-of-state broker who employs the out-of-state salesperson satisfies all of the applicable requirements under sub. (2).

***NOTE: Because the draft includes the requirement that the out-of-state broker with whom the out-of-state salesperson is employed must satisfy the requirements under sub. (2), including entering into a cooperative agreement, it does not seem necessary that the out-of-state salesperson provide the out-of-state broker's consent to work on real estate transactions subject to the cooperative agreement. Do you still want to include that consent requirement?

(b) The out-of-state salesperson works under the direct supervision of the out-of-state broker.

or time-share salesperson ✓

(c) The out-of-state salesperson submits evidence to the licensed broker that the out-of-state salesperson is licensed in good standing to act as a salesperson in a jurisdiction other than this state. *or is otherwise authorized*

~~****NOTE: Does it make sense to include the above license requirement for the out-of-state salesperson given the definition of an out-of-state salesperson as an employee, other than a broker, of the out-of-state broker and the fact that the out-of-state broker with whom the out-of-state salesperson is employed must comply with sub. (2), which includes entering into a cooperative agreement? Perhaps we could only require proof of a license if the out-of-state salesperson is from a jurisdiction that requires such a license. Please let me know how you would like to proceed.~~

~~****NOTE: Also, I did not include the requirement that a person from a jurisdiction that does not separately license a salesperson and broker must satisfy the requirements of sub. (2) because the requirements of sub. (2) have to be satisfied regardless of whether the person is an out-of-state salesperson or out-of-state broker. As currently drafted, the requirements of sub. (2) will always have to be met by an out-of-state broker that wants to do brokerage business in Wisconsin. Please let me know if that is not consistent with your intent.~~

(d) In any real estate transaction subject to the cooperative agreement, the out-of-state salesperson represents only the out-of-state broker with whom the out-of-state salesperson is employed.

(4) COOPERATIVE AGREEMENT. (a) The board shall, by rule, establish the form and terms of the cooperative agreement.

~~****NOTE: The cooperative agreement is most likely subject to the requirements of s. 452.06 concerning submission of real estate forms to the appropriate council. Is that consistent with your intent?~~

(b) The cooperative agreement shall do at least all of the following:

1. Establish the terms of cooperation between the out-of state broker, any out-of-state salesperson, and the licensed broker.

2. Provide that the out-of-state broker may not engage in any of the activities under s. 452.01 (2) (bm) or (h) without the direct involvement of the licensed broker.

~~****NOTE: I cross-referenced the activities described under s. 452.01 (2) (bm) and (h) rather than saying that the out-of-state broker may not "list" a property or "accompany a prospective buyer or tenant to the real estate," i.e. "show" a property, because the activities under s. 452.01 (2) (bm) and (h) presumably cover the listing and showing of properties integral to the brokerage of real estate. Is that change okay?~~

~~****NOTE: Also, what is your intent concerning the use of the term "involvement" here instead of "cooperation"? As noted below, the draft already prohibits an out-of-state~~

or time-share salesperson

Subject to sub. (2) (c)

broker from acting as a licensed broker in this state without cooperating with and entering into a cooperative agreement with a licensed broker. Is it your intent that the licensed broker play a specific role with respect to listing and showing properties subject to the cooperative agreement?

2.2

3. Establish the terms of the out-of-state broker's compensation. Those terms shall provide that the out-of-state broker may not accept any fee or commission in connection with a real estate transaction subject to the cooperative agreement unless the out-of-state broker receives the fee or commission directly from the licensed broker and in accordance with any other terms of the cooperative agreement.

***NOTE: I included the above requirements under subds. 2. and 3. as requirements of the cooperative agreement because they seem to fit better here. In the case of subd. 2., sub. (2) already prohibits an out-of-state broker from performing the acts of a licensed broker in this state unless the out-of-state broker cooperates with a licensed broker and enters into a cooperative agreement with the licensed broker. Also, subd. 3., if made a general statutory requirement as opposed to a requirement for the cooperative agreement might have the unintended consequence of prohibiting a referral fee under s. 452.19.

3.

4. Provide that all client funds, as defined in s. 452.13 (1) (a), that the out-of-state broker and licensed broker receive in connection with a real estate transaction subject to the cooperative agreement shall be deposited in a trust account maintained by the licensed broker.

***NOTE: Should the trust account satisfy the requirements under s. 452.13?

5. Provide that the licensed broker and licensed salesperson may not act under the cooperative agreement on behalf of another licensed broker who is not a party to the cooperative agreement.

***NOTE: Does the above subd. 5. achieve your intent? The drafting instructions state that a licensed broker or licensed salesperson should not be eligible to enter into a cooperative agreement "on behalf of another broker's listings or rental property."

***NOTE: Also, is it possible to have more than one licensed broker, or more than one out-of-state broker for that matter, be a party to a cooperative agreement with an out-of-state broker? Is that consistent with your intent?

6. Require that the out-of-state broker and its agents comply with the laws of this state and require the out-of-state broker to file with the board an irrevocable consent that actions may be commenced against the out-of-state broker in the

1 proper court of any county of the state in which a cause of action arises or in which
2 the plaintiff resides, by the service of any process or pleading authorized by the laws
3 of this state on the board or any duly authorized employee. The consent shall
4 stipulate and agree that such service is valid and binding as due service upon the
5 out-of-state broker in all courts in this state. The consent shall be duly
6 acknowledged and, if made by a corporation, shall be authenticated by the corporate
7 seal.

****NOTE: The above language is taken for the most part from the consent required under s. 452.11 (3). Is the language consistent with your intent?

8 (5) PENALTY. (a) Subject to the rules promulgated under s. 440.03 (1), the board
9 may conduct investigations and hearings to determine whether a person has violated
10 this section or a rule promulgated under this section.

11 (b) Notwithstanding s. 452.17 (3), any person who violates this section or a rule
12 promulgated under this section may be fined not more than \$5,000 for each violation.

13 **SECTION 5. Effective date.**

14 (1) This act takes effect on first day of the 7th month beginning after
15 publication.

****NOTE: I included a six-month delayed effective date to give the board time to develop and implement the cooperative agreement. Please let me know if that is not consistent with your intent.

16 (END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

date

LRB-3217/P2dn

MPG:jld:rs

↑
keep

Representative Knudson: ✓

Please review this draft carefully to ensure that it is consistent with your intent.

This preliminary draft is a redraft based on the instructions and comments forwarded to me by Matt Rossetto via e-mail on October 9, 2013. Please note that I did not include any additional language in response to the additional comment concerning rules promulgation at the bottom of page two of the instructions and comments because the draft already contains a rule promulgation requirement concerning the terms and form of the cooperative agreement. See s. 452.137 (4) (a), ✓ created in the draft.

Please also see my drafter's notes embedded in the draft, and do not hesitate to contact me with any questions.

Thank you.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

LRB-3217/P2ins
MPG:jld:rs

[Merge with text, no ¶]

(END INSERT 2-5)

(END INSERT 2-17)

(b) An out-of-state broker who is a party to a cooperative agreement with a licensed broker may not list a property in this state for sale or rent or accompany a prospective buyer or tenant to the property without the involvement of the licensed broker.

****NOTE: As requested, I have included the “list” and “accompany a prospective buyer” language instead of referencing the activities included under the definition of “broker” under s. 452.01 (2) (bm)✓ and (h)✓. As I previously indicated, the term “list” in particular may be vague here with respect to the conduct being prohibited. That term is not used in the same sense anywhere in ch. 452✓, and it would be a better practice to maintain consistency with the activities described under the definition of “broker.”✓ activities that are generally prohibited without a license.

***NOTE: Also, as I previously indicated, the term "involvement" is vague. I included that term consistent with what is requested in the drafting instructions. Please let me know if you want to clarify the role for the licensed broker when the out-of-state broker lists or shows a property or if you want to retain the requirement of "involvement."

(c) An out-of-state broker who is a party to a cooperative agreement with a licensed broker may not accept any fee or commission in connection with a real estate transaction subject to the cooperative agreement unless the out-of-state broker receives the fee or commission directly from the licensed broker and in accordance with any other terms of the cooperative agreement. ✓

1 (d) An out-of-state broker who is a party to a cooperative agreement with a
2 licensed broker, and any salesperson or time-share sales^gperson of the out-of-state
3 broker, shall comply with the laws of this state, and the out-of-state broker shall file
4 with the board[✓] an irrevocable consent that actions may be commenced against the
5 out-of-state broker in the proper court of any county in this state in which a cause
6 of action arises or the plaintiff resides, by the service of any process or pleading
7 authorized by the laws of this state on the board or any duly authorized employee.
8 The consent shall stipulate and agree that such service is valid and binding as due
9 service upon the out-of-state broker in all courts in this state. The consent shall be
10 duly acknowledged and, if made by a corporation, shall be authenticated by the
11 corporate seal.[✓]

12 (e) A licensed broker who is a party to a cooperative agreement with an
13 out-of-state broker, and any licensed salesperson or licensed
14 time-share^gsalesperson^A of the licensed broker, may not act under the cooperative
15 agreement on behalf of a licensed broker who is not a party to the cooperative
16 agreement.[✓]

17 (END INSERT 3-8)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3217/P2dn
MPG:jld:rs

October 22, 2013

Representative Knudson:

Please review this draft carefully to ensure that it is consistent with your intent.

This preliminary draft is a redraft based on the instructions and comments forwarded to me by Matt Rossetto via e-mail on October 9, 2013. Please note that I did not include any additional language in response to the additional comment concerning rules promulgation at the bottom of page two of the instructions and comments because the draft already contains a rule promulgation requirement concerning the terms and form of the cooperative agreement. See s. 452.137 (4) (a), created in the draft.

Please also see my drafter's notes embedded in the draft, and do not hesitate to contact me with any questions.

Thank you.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

Gallagher, Michael

From: Gallagher, Michael
Sent: Wednesday, October 30, 2013 10:00 AM
To: Rossetto, Matt
Subject: RE: LRB 3217

Got it. I think that restriction is already covered by the draft—must be under cooperative agreement to do anything that would require a license in the state—but I will see what I can do to clarify the intent as much as possible in the draft.

Mike

Mike Gallagher
Attorney
Wisconsin Legislative Reference Bureau
(608) 267-7511

From: Rossetto, Matt
Sent: Wednesday, October 30, 2013 9:54 AM
To: Gallagher, Michael
Subject: LRB 3217

Per your second drafter's note, this was the language Cori suggested:

(b) An out-of-state broker is not permitted to ~~who is a party to a cooperative agreement with a licensed broker~~ ~~may not~~ enter into a listing agreement list on a property in this state for sale or rent or accompany a prospective buyer or tenant to the property unless the out-of-state broker is entered into a cooperative agreement with a licensed broker. ~~without the involvement of the licensed broker.~~

Thanks for your work on this,

Matt

Matt Rossetto
Office of Representative Dean Knudson
30th Assembly District
(608) 266-1526

Gallagher, Michael

From: Rossetto, Matt
Sent: Wednesday, October 30, 2013 9:54 AM
To: Gallagher, Michael
Subject: LRB 3217

Per your second drafter's note, this was the language Cori suggested:

(b) An out-of-state broker is not permitted to ~~who is a party to a cooperative agreement with a licensed broker~~
~~may not~~ enter into a listing agreement list on a property in this state for sale or rent or accompany a prospective
buyer or tenant to the property unless the out-of-state broker is entered into a cooperative agreement with a
licensed broker. ~~without the involvement of the licensed broker.~~

Thanks for your work on this,

Matt

Matt Rossetto
Office of Representative Dean Knudson
30th Assembly District
(608) 266-1526



IN: 10/31/2013 Soon
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3217P2
MPG:jld:rs

THANKS!

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

183

Regen

✓

1 AN ACT *to create* 452.01 (5n), 452.01 (5p) and 452.137 of the statutes; **relating**
2 **to:** cooperation of Wisconsin licensed real estate brokers with out-of-state real
3 estate brokers, salespersons, and time-share salespersons, requiring the
4 exercise of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 452.01 (5n) of the statutes is created to read:
6 452.01 (5n) "Out-of-state broker" means a nonresident who is not licensed
7 under this chapter and who is regularly and lawfully engaged in the real estate
8 brokerage business in another state, a territory or possession of the United States,
9 or a foreign country.

1 **SECTION 2.** 452.01 (5p) of the statutes is created to read:

2 452.01 (5p) "Out-of-state salesperson" means a nonresident who is not
3 licensed under this chapter and who is employed by an out-of-state broker.
4 "Out-of-state salesperson" includes a time-share salesperson employed by an
5 out-of-state broker.

6 **SECTION 3.** 452.137 of the statutes is created to read:

7 **452.137 Cooperation with out-of-state brokers and salespersons. (1)**

8 DEFINITIONS. In this section:

9 (a) "Cooperative agreement" means the agreement established by the board
10 under sub. (4).

11 (b) "Licensed broker" means a broker who is licensed under this chapter.

12 (c) "Licensed salesperson" means a salesperson who is licensed under this
13 chapter.

14 (d) "Licensed time-share salesperson" means a time-share salesperson who is
15 licensed under this chapter.

16 (2) OUT-OF-STATE BROKERS. (a) An out-of-state broker may act as a broker in
17 this state only if the out-of-state broker does all of the following:✓

18 1. Enters into a cooperative agreement with a licensed broker and cooperates
19 with the licensed broker on all real estate transactions subject to the cooperative
20 agreement.

21 2. Submits to the licensed broker evidence that the out-of-state broker is
22 licensed in good standing to engage in real estate brokerage in a jurisdiction other
23 than this state.

24 (b) ~~An out-of-state broker who is a party to a cooperative agreement with a~~
25 ~~licensed broker may not list a property in this state for sale or rent or accompany a~~

including by entering into listing agreements or accompanying
prospective buyers or tenants to a property for sale or

rent in this state

1 prospective buyer or tenant to the property without the involvement of the licensed,
2 broker.

****NOTE: As requested, I have included the "list" and "accompany a prospective buyer" language instead of referencing the activities included under the definition of "broker" under s. 452.01 (2) (bm) and (h). As I previously indicated, the term "list" in particular may be vague here with respect to the conduct being prohibited. That term is not used in the same sense anywhere in ch. 452, and it would be a better practice to maintain consistency with the activities described under the definition of "broker" — activities that are generally prohibited without a license.

****NOTE: Also, as I previously indicated, the term "involvement" is vague. I included that term consistent with what is requested in the drafting instructions. Please let me know if you want to clarify the role for the licensed broker when the out-of-state broker lists or shows a property or if you want to retain the requirement of "involvement."

3 b (b) An out-of-state broker who is a party to a cooperative agreement with a
4 licensed broker may not accept any fee or commission in connection with a real estate
5 transaction subject to the cooperative agreement unless the out-of-state broker
6 receives the fee or commission directly from the licensed broker and in accordance
7 with any other terms of the cooperative agreement.

8 c (c) An out-of-state broker who is a party to a cooperative agreement with a
9 licensed broker, and any salesperson or time-share salesperson of the out-of-state
10 broker, shall comply with the laws of this state, and the out-of-state broker shall file
11 with the board an irrevocable consent that actions may be commenced against the
12 out-of-state broker in the proper court of any county in this state in which a cause
13 of action arises or the plaintiff resides, by the service of any process or pleading
14 authorized by the laws of this state on the board or any duly authorized employee.
15 The consent shall stipulate and agree that such service is valid and binding as due
16 service upon the out-of-state broker in all courts in this state. The consent shall be
17 duly acknowledged and, if made by a corporation, shall be authenticated by the
18 corporate seal.

(1) (d) A licensed broker who is a party to a cooperative agreement with an
out-of-state broker, and any licensed salesperson or licensed time-share
salesperson of the licensed broker, may not act under the cooperative agreement on
behalf of a licensed broker who is not a party to the cooperative agreement.

(5) (e) An out-of-state broker who is party to a cooperative agreement with a
licensed broker shall deposit with the licensed broker copies of all documents the
out-of-state broker receives or generates in connection with any real estate
transaction subject to the cooperative agreement, unless the out-of-state broker and
licensed broker agree in writing that the out-of-state broker is not required to do so.
A licensed broker shall maintain all documents it receives under this paragraph, and
all other documents it receives or generates in connection with a real estate
transaction subject to the cooperative agreement, for at least 3 years after the date
of closing on the transaction.

(3) OUT-OF-STATE SALESPERSONS. An out-of-state salesperson may act as a
salesperson or time-share salesperson in this state only if all of the following
conditions are met:

(a) The out-of-state broker who employs the out-of-state salesperson satisfies
all of the applicable requirements under sub. (2).[✓]

(b) The out-of-state salesperson works under the direct supervision of the
out-of-state broker.

(c) The out-of-state salesperson submits evidence to the licensed broker that
the out-of-state salesperson is licensed in good standing or is otherwise authorized
to act as a salesperson or time-share salesperson in a jurisdiction other than this
state.

(d) In any real estate transaction subject to the cooperative agreement, the out-of-state salesperson represents only the out-of-state broker with whom the out-of-state salesperson is employed.

(4) COOPERATIVE AGREEMENT. (a) The board shall, by rule, establish the form and terms of the cooperative agreement.

(b) The cooperative agreement shall do at least all of the following:

1. Establish the terms of cooperation between the out-of state broker, any out-of-state salesperson, and the licensed broker.

2. Subject to sub. (2) (g), establish the terms of the out-of-state broker's compensation.

3. Provide that all client funds, as defined in s. 452.13 (1) (a), that the out-of-state broker and licensed broker receive in connection with a real estate transaction subject to the cooperative agreement shall be deposited in a trust account maintained by the licensed broker.

(5) PENALTY. (a) Subject to the rules promulgated under s. 440.03 (1), the board may conduct investigations and hearings to determine whether a person has violated this section or a rule promulgated under this section.

(b) Notwithstanding s. 452.17 (3), any person who violates this section or a rule promulgated under this section may be fined not more than \$5,000 for each violation.

SECTION 4. Effective date.

(1) This act takes effect on August 1, 2014.

(END)

d-note
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3217/P3dn
MPG:jld:rs

October 22, 2013 } new date

Representative Knudson:

Please review this draft carefully to ensure that it is consistent with your intent. ✓

* This preliminary draft is a redraft based on my telephone conversation and October 30, 2013, e-mail correspondence with Matt Rossetto. Please see s. 452.137 (2) (a) ✓ (intro.) in the draft for the relevant changes.

Please do not hesitate to contact me with any questions.

Thank you.

Michael Gallagher
Legislative Attorney
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E-mail: michael.gallagher@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3217/P3dn
MPG:jld:jf

November 4, 2013

Representative Knudson:

Please review this draft carefully to ensure that it is consistent with your intent.

This preliminary draft is a redraft based on my telephone conversation and October 30, 2013, e-mail correspondence with Matt Rossetto. Please see s. 452.137 (2) (a) (intro.) in the draft for the relevant changes.

Please do not hesitate to contact me with any questions.

Thank you.

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